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OFFICE OF PETITIONS

In re Application of :
SCHLEGEL et al. : LETTER REGARDING
Application No. 10/071,138 : PATENT TERM ADJUSTMENT
Filed: February 8, 2002 :
Attorney Docket No. 0112300-742 :

This letter is in response to the "REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT UNDER 37 C.F.R. § 1.705(b)," filed January 8, 2008, which is properly treated as a request that the determination of patent term adjustment under 35 U.S.C. 154(b) be reviewed for accuracy in accordance with applicants' duty of good faith and candor to the Office. Applicants state that the patent term adjustment should be corrected from 479 days to 444 days.

The request for review of the determination of patent term adjustment is GRANTED to the extent indicated herein.

The Office has updated the PAIR screen to reflect that the correct Patent Term Adjustment (PTA) determination at the time of the mailing of the notice of allowance is **443 days**. A copy of the updated PAIR screen, showing the correct determination, is enclosed.

On December 10, 2007, the Office mailed the Determination of Patent Term Adjustment under 35 U.S.C. 154(b) in the above-identified application. The Notice stated that the patent term adjustment to date is 479 days. On January 8, 2008, applicants submitted the instant comment.

Applicants assert that the patent term adjustment should be reduced by 35 days for the period of time in excess of three months that was taken to reply to an Office action. See 37 CFR 1.704(b). Specifically, applicants state that a Request for

Continued Examination (RCE) was filed on July 6, 2005, in excess of the three-month period from the mailing date of the final Office action on March 1, 2005.

Applicants' assertion is well taken. The period of adjustment of the term of the patent should be reduced by 35 days, the number of days in the period beginning on the day after the date that is three months after the date of mailing of the final Office action, June 2, 2005, and ending on the date the RCE was filed, July 6, 2005. See 37 CFR 1.704(b).

Additionally, a review of the application history reveals that applicants filed a RCE on Monday, May 7, 2007,¹ three months and one day after the date of the mailing of the final Office action on February 6, 2007. As applicants failed to engage in reasonable efforts to conclude processing or examination of the application within the meaning of 37 CFR 1.704(b), an additional period of reduction of one day is warranted.

In view thereof, the correct patent term adjustment at the time of the mailing of the notice of allowance is **443 days** (632 days of Office delay - 189 days of applicant delay).

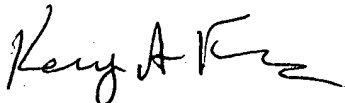
As this letter was submitted as an advisement to the Office of an error in applicants' favor, the Office will not assess the \$200.00 fee as set forth in 37 CFR 1.18(e). Therefore, the \$200.00 fee submitted on January 8, 2008, will be refunded to the Deposit Account. The Office thanks applicants for their good faith and candor in bringing this to the attention of the Office.

Applicants are reminded that any delays by the Office pursuant to 37 CFR 1.702(a)(4) and 1.702(b) and any applicant delays under 37 CFR 1.704(c)(10) will be calculated at the time of the issuance of the patent and applicants will be notified in the Issue Notification letter that is mailed to applicants approximately three weeks prior to issuance.

¹ The Office notes that the calculation of applicant delay is based on the date of receipt of a response in the Office. 35 U.S.C. 154(b)(2)(C)(ii) does not require that a reply be filed in the Office within its three (3) month grace period, but simply specifies that there is a patent term adjustment reduction if a reply is not filed within this three (3) month period. Therefore, the "carry-over" provisions of 35 U.S.C. 21(b) do not apply to the three (3) month period in 35 U.S.C. 154(b)(2)(C)(ii).

The Office of Data Management has been advised of this decision. This matter is being referred to the Office of Data Management for issuance of the patent.

Telephone inquiries regarding this matter should be directed to Christina Tartera Donnell, Senior Petitions Attorney, at (571) 272-3211.



Kery A. Fries
Senior Legal Advisor
Office of Patent Legal Administration
Office of the Deputy Commissioner
for Patent Examination Policy

Enclosure: Copy of updated PAIR screen

Day : Sunday
Date: 7/20/2008

PALM INTRANET

Time: 09:39:15

PTA Calculations for Application: 10/071138

Application Filing Date:	02/08/2002	PTO Delay (PTO):	632
Issue Date of Patent:		Three Years:	0
Pre-Issue Petitions:	0	Applicant Delay (APPL):	153
Post-Issue Petitions:	0	Total PTA (days):	443
PTO Delay Adjustment:	-36		

File Contents History

Number	Date	Contents Description	PTO	APPL	START
75	07/20/2008	ADJUSTMENT OF PTA CALCULATION BY PTO		36	
66	12/10/2007	MAIL NOTICE OF ALLOWANCE			
65	12/05/2007	ISSUE REVISION COMPLETED			
63	10/31/2007	ALLOWED CASE RETURNED TO THE EXAMINER FOR CLERICAL PROCESSING			
62	10/22/2007	DOCUMENT VERIFICATION			
61	10/22/2007	NOTICE OF ALLOWANCE DATA VERIFICATION COMPLETED			
60	10/22/2007	NOTICE OF ALLOWABILITY			
58	07/23/2007	CASE DOCKETED TO EXAMINER IN GAU			
57	06/26/2007	CASE DOCKETED TO EXAMINER IN GAU			
56	05/08/2007	DATE FORWARDED TO EXAMINER			
55	05/07/2007	AMENDMENT SUBMITTED/ENTERED WITH FILING OF CPA/RCE			
54	05/08/2007	DATE FORWARDED TO EXAMINER			
53	05/07/2007	REQUEST FOR CONTINUED EXAMINATION (RCE)			
52	05/08/2007	DISPOSAL FOR A RCE/CPA/129 (EXPRESS ABANDONMENT IF CPA)			
51	05/07/2007	WORKFLOW - REQUEST FOR RCE - BEGIN			
50	02/06/2007	MAIL FINAL REJECTION (PTOL - 326)	235		42
49	01/22/2007	FINAL REJECTION			
48	02/16/2006	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
47	12/14/2006	CASE DOCKETED TO EXAMINER IN GAU			
46	10/05/2006	CASE DOCKETED TO EXAMINER IN GAU			
45	05/07/2006	CASE DOCKETED TO EXAMINER IN GAU			
		INFORMATION DISCLOSURE STATEMENT (IDS)			

44.7	02/16/2006	FILED		0	42
44	02/16/2006	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
43	02/28/2006	DATE FORWARDED TO EXAMINER			
42	02/16/2006	RESPONSE AFTER NON-FINAL ACTION		69	36
41	02/16/2006	REQUEST FOR EXTENSION OF TIME - GRANTED			
40	01/13/2006	MAIL EXAMINER INTERVIEW SUMMARY (PTOL - 413)			
39	01/10/2006	EXAMINER INTERVIEW SUMMARY RECORD (PTOL - 413)			
38	01/06/2006	LETTER REQUESTING INTERVIEW WITH EXAMINER			
37	10/06/2005	CASE DOCKETED TO EXAMINER IN GAU			
36	09/09/2005	MAIL NON-FINAL REJECTION			
35	09/06/2005	NON-FINAL REJECTION			
34.7	07/06/2005	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
34	07/06/2005	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
33	07/18/2005	DATE FORWARDED TO EXAMINER			
32	07/06/2005	AMENDMENT SUBMITTED/ENTERED WITH FILING OF CPA/RCE			
31	07/18/2005	DATE FORWARDED TO EXAMINER			
30	07/06/2005	REQUEST FOR CONTINUED EXAMINATION (RCE)			
29	07/18/2005	DISPOSAL FOR A RCE/CPA/129 (EXPRESS ABANDONMENT IF CPA)			
28	07/06/2005	REQUEST FOR EXTENSION OF TIME - GRANTED			
27	07/06/2005	WORKFLOW - REQUEST FOR RCE - BEGIN			
26	04/21/2005	TRANSFER INQUIRY TO GAU			
25	03/01/2005	MAIL FINAL REJECTION (PTOL - 326)	89		21
24	02/25/2005	FINAL REJECTION			
23	09/24/2004	IFW TSS PROCESSING BY TECH CENTER COMPLETE			
22	09/24/2004	DATE FORWARDED TO EXAMINER			
21	08/02/2004	RESPONSE AFTER NON-FINAL ACTION		84	12
20	08/02/2004	REFERENCE CAPTURE ON IDS			
19.7	08/02/2004	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			

19	08/02/2004	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
18	08/02/2004	REQUEST FOR EXTENSION OF TIME - GRANTED			
17	07/28/2003	REFERENCE CAPTURE ON IDS			
16	04/15/2003	REFERENCE CAPTURE ON IDS			
15	02/08/2002	REFERENCE CAPTURE ON IDS			
14.7	02/08/2002	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
14	02/08/2002	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
13	08/02/2004	WORKFLOW INCOMING AMENDMENT IFW			
12	02/10/2004	MAIL NON-FINAL REJECTION	308		-1
11	02/05/2004	NON-FINAL REJECTION			
10	11/17/2003	CASE DOCKETED TO EXAMINER IN GAU			
8.7	07/28/2003	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
8	07/28/2003	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
7.7	04/15/2003	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
7	04/15/2003	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
6	04/03/2002	CASE DOCKETED TO EXAMINER IN GAU			
5	03/12/2002	APPLICATION DISPATCHED FROM OIPE			
4	03/08/2002	APPLICATION IS NOW COMPLETE			
2	02/23/2002	IFW SCAN & PACR AUTO SECURITY REVIEW			
1	02/08/2002	INITIAL EXAM TEAM NN			

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EXPLANATION OF PTA CALCULATION

EXPLANATION OF PTE CALCULATION

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